

SUPERIOR COURT OF WASHINGTON FOR KITSAP COUNTY

MARK MORITZ, an individual,

Plaintiff,

v.

WALMART INC., a foreign profit corporation
licensed to do and doing business in the State of
Washington,

Defendant.

NO. 3:22-cv-5595

(KITSAP COUNTY SUPERIOR COURT
CAUSE NO. 22-2-00900-18)

NOTICE OF REMOVAL BY
DEFENDANT WALMART INC.

(CLERK'S ACTION REQUIRED)

TO: CLERK OF THE COURT;

AND TO: PLAINTIFF'S COUNSEL OF RECORD

I. RELIEF REQUESTED

Defendant WALMART INC. ("Walmart") seeks to remove the above-captioned case from Kitsap County Superior Court in Washington State to the United States District Court for the Western District of Washington at Tacoma under 28 U.S.C. §§ 1332, 1441, and 1446.

II. STATEMENT OF FACTS

1. Underlying Incident

Plaintiff MARK MORITZ ("Plaintiff") alleges that he "slipped/tripped and fell resulting in personal injury and other damages" while walking in the checkout area of a Walmart Supercenter in Poulsbo, Washington, on February 6, 2022. *See* Declaration of Eddy Silverman, attached hereto as **Exhibit A**; *see also* Summons and Complaint, attached hereto as

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1 **Exhibit B.**

2 2. Relevant Procedural Facts

3 Plaintiff filed a Complaint in the Superior Court of Washington for Kitsap County on
4 June 6, 2022. *See* Ex. B. Plaintiff served Walmart with a copy of the Summons and Complaint
5 on June 10, 2022. *See id.*

6 The Complaint does not contain a statement of damages sought (in compliance with
7 RCW 4.28.360) and is vague with respect to the nature and/or extent of the injuries allegedly
8 sustained. *See generally* Ex. B. For instance, the Complaint does not say what part of the body
9 Plaintiff injured or what type of injury he sustained. *See id.*

10 On June 23, 2022, Walmart served Plaintiff with an RCW 4.28.360 Request for
11 Statement of Damages (“RSD”) and First Set of Interrogatories and Requests for Production of
12 Documents (“initial written discovery”). *See* RSD & Pl.’s response letter, attached hereto as
13 **Exhibit C**; *see also* Pl.’s Resp. to initial written discovery, attached hereto as **Exhibit D**.

14 Plaintiff’s counsel responded to Walmart RSD on July 6, 2022, with myriad objections and an
15 incomplete statement of damages, claiming a small amount of past medical expenses while
16 suggesting that mileage, lost wages, and future medical expenses might be sought eventually
17 but were all “unknown at this time.” *See* Ex. C. Plaintiff offered similarly vague
18 representations concerning actual amounts claimed in their responses to Walmart’s initial
19 written discovery; however, these responses shed light on the nature of the injury claimed. In
20 response to Interrogatory No. 13, asking Plaintiff to “state your understanding of the injury or
21 injuries you sustained,” Plaintiff responded, **“right leg broken in two areas and five
22 fractures and foot swelling.”** Ex. D. Plaintiff also affirmed that he was, in fact, claiming past
23 lost wages, possibly future lost wages, and still actively treating his injuries. *Id.*, Resp. to
24 Interrogs. 15, 17.

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1 III. STATEMENT OF ISSUE

2 Whether this case may be properly removed to federal court where discovery responses
3 served in the state court matter plausibly establish that the amount in controversy exceeds the
4 jurisdictional threshold of \$75,000 and where there is total diversity on the face of the
5 Complaint, and where Walmart is seeking to remove within 30 days of service of the
6 aforementioned discovery responses on Walmart.

7 IV. EVIDENCE RELIED UPON

8 This motion is based upon the records and pleadings on file with the Court and the
9 Declaration of Eddy Silverman, Esq., attached hereto as Exhibit A.

10 V. ARGUMENT

11 A. This Case Is Removable Under 28 U.S.C. § 1332, Through Which This Court Has Original
12 Jurisdiction Over The Lawsuit Filed By Plaintiff In Kitsap County Superior Court

13 The district courts shall have original jurisdiction of all civil actions where (1) the
14 parties in the case are diverse as defined by 28 U.S.C. § 1332(a)(1)-(4), and where (2) the
15 amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.
16 The amount in controversy can either be evident “on the face” of the Complaint or ascertained
17 via some later pleading(s) or “other paper” in the record of the state court proceeding. *See* 28
18 U.S.C. § 1446(b)(3); *see also Harris v. Bankers Life and Cas. Co.*, 425 F.3d 689 (2005). “If
19 the case stated by the initial pleading is not removable solely because the amount in
20 controversy does not exceed the amount specified in section 1332(a), information relating to
21 the amount in controversy in the record of the State proceeding **or discovery responses** shall
22 be treated as ‘other paper’ under subsection (b)(3).” 28 U.S.C. 1446(b)(3). A defendant’s
23 notice of removal need only include a “plausible allegation” that the amount in controversy
24 exceeds the jurisdictional threshold. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574
25 U.S. 81, 89 (2014). *C.f. Green v. Metal Sales Mfg. Corp.*, 394 F. Supp. 2d 864 (S.D. W. Va.

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1 2005) (considering the plaintiff’s allegation of “severe fracture” in finding that amount in
2 controversy “clearly” exceed \$75,000); *Bracken v. Dolgencorp, LLC*, 2018 WL 6249715, at *5
3 n. 47 (E.D. Pa. 2018) (citing more than a half-dozen cases wherein defendants “could have
4 reasonably and intelligently concluded the amount in controversy exceeded \$75,000” based on
5 the nature of injuries alleged).

6 When and how removability is “ascertainable” matters with respect to whether removal
7 is timely under 28 U.S.C. § 1446. There are, generally speaking, two viable “removal
8 periods.” *See Harris*, 425 F.3d at 694. [1] A defendant has 30 days to remove a case if the
9 removability of the case is evident on the face of the complaint, or [2] a defendant has 30 days
10 beyond some later period from which it first becomes ascertainable that the case is removable.
11 *See id.* (“[T]he first thirty-day requirement [to remove] is triggered by the defendant’s receipt
12 of an ‘initial pleading’ that reveals a basis for removal. If no ground for removal is evident in
13 that pleading, the case is ‘not removable’ at that stage. In such case, the notice of removal may
14 be filed within thirty days after the defendant receives [‘other paper’] from which it can be
15 ascertained...that removal is proper.”) (citations omitted). The receipt of information “relating
16 to” the amount in controversy in responses to discovery, that sheds light on the nature and
17 extent of damages, can be a triggering event—Accord 28 U.S.C. 1446(b)(3).

18 In this case, diversity between the parties is evident on the face of the Complaint. The
19 amount in controversy was not apparent on the face of the Complaint nor ascertainable from
20 the Complaint allegations; however, information that Walmart received subsequently in
21 response to written discovery has made it reasonably plausible and/or ascertainable that the
22 amount in controversy in this matter is in excess of \$75,000. Finally, insofar as Walmart is
23 filing this Notice of Removal within 30 days of service of the subject information, Walmart’s
24 Notice is timely, and this case may be properly removed under 28 U.S.C. §§ 1446(b) and 1332.

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1 1. There Is Diversity Between The Parties

2 According to the Complaint, Plaintiff is a Skagit County, Washington resident. Ex. B
3 at ¶1.1. Thus, Plaintiff is a “citizen of” Washington State. Walmart Inc. is (a) incorporated in
4 Delaware, and (b) its principal place of business is in Arkansas. Thus, Walmart is a “citizen
5 of” either Delaware or Arkansas, but not Washington State. *See* 28 U.S.C. 1332(c)(1)
6 (explaining how to determine *corporate* citizenship). Based on the foregoing, there is total
7 diversity between these parties as described in 28 U.S.C. 1332(a)(1).

8 2. The Amount Is Controversy Is Plausibly In Excess Of \$75,000

9 Plaintiff did not claim a sum certain in the Complaint or put any numerical value on her
10 alleged damages. Walmart endeavored to discern the numerical value of Plaintiff’s claim via
11 various means, but Plaintiff was not forthcoming with such information. Plaintiff did represent
12 in response to the discovery that as a consequence of the incident, his “right leg [was] broken
13 in two areas,” and he sustained five total fractures, plus lost wages and possible other related
14 damages. The plaintiff alleges Walmart is responsible for all his claimed injuries and damages.
15 Ex. B. . Based on this information, Walmart can reasonably and intelligently conclude that the
16 amount in controversy in this matter is more than \$75,000, exclusive of interest and costs.

17 3. Walmart’s Notice Of Removal Is Timely

18 Walmart is filing this Notice within 30 days of service of discovery in the state court
19 action revealing the nature and extent of Plaintiff’s claimed injuries; therefore, this Notice is
20 timely under 28 U.S.C. § 1446(b)(1).

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25 B. Walmart’s Notice Of Removal Complies With All Applicable Local And Federal
Procedural Rules Attendant To Removal

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2 1. This Notice And Accompanying Documents Satisfy LCR 101

3 Pursuant to LCR 101(b), in cases removed from state court, the removing defendant
4 shall file contemporaneously with the notice of removal:

- 5 (1) A copy of the operative complaint, which must be attached as a separate
6 “attachment” in the electronic filing system and labeled as the
7 “complaint” or “amended complaint.”
8 (2) A certificate of service which lists all counsel and pro se parties who
9 have appeared in action with their contact information, including email
10 address.
11 (3) A copy of any Jury Demand filed in the state court must be filed as an
12 attachment and labeled “Jury Demand.”

13 In addition to the foregoing, the removing defendant(s) shall, within 14 days of filing this
14 Notice, or contemporaneously, file with the clerk of this Court black-on-white copies of all
15 additional records and proceedings in the state court, together with verification that they are
16 true and complete copies. LCR 101(c).

17 Walmart has filed and/or otherwise provided true and complete copies of all of the
18 above-referenced documents as required under local rules, including copies of all records and
19 proceedings filed in the state court proceeding removed by this petition. *See* **Exhibit E**. These
20 documents/exhibits constitute and contain the entirety of the records and proceedings filed in
21 Kitsap County Superior Court as of the date of filing this Notice.

22 2. Both The Federal And State Courts Are On Properly Notice Of This Removal Action

23 This Notice is properly filed in the United States District Court for the Western District
24 of Washington because this Court embraces Kitsap County, the county in which the state court
25 action is now pending. *See* 28 U.S.C. §§ 128(b) and 1441(a).

1 Pursuant to 28 U.S.C. §§ 1446(d), Walmart is filing a copy of this Notice with the Clerk
2 of the Kitsap County Superior Court and is also serving a copy of this Notice on Plaintiff's
3 counsel of record in the state court action.

4 **VI. CONCLUSION**

5 Walmart hereby removes this matter from the Kitsap County Superior Court to the
6 United States District Court for the Western District of Washington. By seeking removal,
7 Walmart does not waive any defenses, including but not limited to lack of personal jurisdiction,
8 insufficiency of process, or insufficiency of service of process.

9 DATED this 16th day of August 2022.

10
11 **WILLIAMS, KASTNER & GIBBS PLLC**

12 s/ Eddy Silverman

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19 ***Counsel for Defendant Walmart Inc.***

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the date indicated below; I caused service of a true and correct copy of the foregoing document in the manner indicated below to:

Shelbi Eller, WSBA #56981
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Phone: (206) 607-9098
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Email: seller@advocates.com

☒ US Mail
☒ Email

Counsel for Plaintiff

DATED this 16th day of August 2022.

WILLIAMS KASTNER & GIBBS PLLC

s/ Ryan McDade

Ryan McDade, Legal Assistant

rmcdade@wkg.com

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